

In The United States District Court
For The Northern District Of Texas
Dallas Division

Marguerite Hoffman,

Plaintiff,

v.

L&M Arts, David Martinez and
Studio Capital, Inc.,

Defendants.

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Civil Action No. 3:10-cv-0953-D

UPDATED DEFENDANTS' STATUS REPORT

Defendants Studio Capital, Inc., David Martinez, and L&M Arts hereby submit the following updated Defendants' status report to update the Court on open matters. Defendants were in the process of discussing a joint updated status report with Plaintiff's counsel, but earlier today, without prior notice to us, Plaintiff unilaterally filed a report of her own. This report presents Defendants' positions on outstanding matters and corrects misrepresentations and omissions in Plaintiff's report.

Discovery:

1. Fact Discovery

a. *Documents*

On June 21 and 22, 2012, the Magistrate Judge issued orders resolving various open fact discovery matters [Dkt. Nos. 260, 261, 262, 264, 265, and 266]. Defendants Studio Capital, Inc. and David Martinez collected documents responsive to Plaintiff's requests as narrowed by these orders and produced them on July 5, 2012. Defendant L&M Arts had an additional document responsive to these requests as so narrowed, which document has been produced.

b. *Depositions*

Defendants first offered the deposition of Nathalie Sutter, who is an employee of the administrator of Studio Capital, in Switzerland where she lives and works, on February 21, 2012 in response to a request by Plaintiff and again on April 11, 2012 in response to a notice of deposition of her personally. When Plaintiff thereafter noticed a 30(b)(6) deposition of Studio Capital, Studio Capital offered on April 13, 2012 to provide a witness in London on May 1 for such a deposition. Plaintiff refused to accept either of these proposals and demanded that the deposition take place in New York.

The Magistrate Judge ordered that both the 30(b)(6) deposition of Studio Capital and the deposition of Nathalie Sutter take place at an agreed location in Europe [Dkt. No. 260 and 265]. In accordance with these orders, Studio Capital and David Martinez promptly proposed that the 30(b)(6) deposition of Studio Capital by Nathalie Sutter on all the subjects left open by the Magistrate Judges' orders and the deposition of Nathalie Sutter individually take place in a single session on July 11, 2012 in London (Ms. Sutter having been on vacation until July 9). Plaintiff's counsel refused to make themselves available on that date. As Defendants informed Plaintiff's counsel, after July 13, Ms. Sutter's personal counsel is on vacation until after July 30. Plaintiff's counsel agreed to take Ms. Sutter's deposition after that date, and Defendants' counsel is seeking to schedule this deposition as soon as practicable upon Ms. Sutter's personal counsel's return.

2. Expert Discovery

The parties attempted to schedule expert depositions in May 2012, but, because of scheduling difficulties, agreed that the expert depositions would occur in June. However, these depositions remain incomplete as set forth below.

a. *Plaintiff's Expert*

Plaintiff's counsel stated on June 18, 2012 that Mr. Victor Wiener, expert for Plaintiff Marguerite Hoffman, would be available for a deposition on June 26 or June 27. However, on June 25, Plaintiff's counsel stated that Mr. Wiener would not be available for his deposition until July 3. This last-minute postponement of Mr. Wiener's deposition necessitated an amendment to the scheduling order to move the deadline for motions for summary judgment and motions not otherwise covered from June 30 to July 13 [Dkt. Nos. 267 and 268]. In the afternoon of Friday, June 29 – with less than two full business days remaining before Mr. Wiener's scheduled deposition on July 3 – Plaintiff's counsel emailed Defendants' counsel a 45-page purported Supplemental Expert Report of Victor Wiener. Defendants will move to strike this report on or before the motions deadline of July 13, 2012 because it was submitted seven months after the deadline for expert reports and five months after the deadline for rebuttal expert reports under the operative Scheduling Order in this case.

Defendants began the deposition of Mr. Wiener on July 3 (at 1:30 p.m., at Plaintiff's counsel's insistence), but received only four hours of testimony before Plaintiff terminated the deposition, saying that Mr. Wiener was feeling fatigued and wished to stop. Mr. Wiener's deposition was adjourned with no new date to resume that deposition and Plaintiff's counsel has since then failed to provide any date when Mr. Wiener would make himself available for his deposition.

During the deposition, Mr. Wiener revealed that, contrary to Plaintiff's counsel's statements that Mr. Wiener was not available for a deposition on June 26 or June 27, Mr. Wiener in fact met with Plaintiff's counsel each day from Tuesday June 26 through Friday June 29. Thus, it appears that Plaintiff's counsel delayed Mr. Wiener's deposition, thereby necessitating a

last-minute amendment to the scheduling order, so that the purported Supplemental Expert Report could be completed before Mr. Wiener was deposed.

b. *Defendants' Experts*

The deposition of David Nash, expert for Defendant L&M Arts, was taken in part on July 5, 2012.

The deposition of Ben Heller, expert for Defendants Studio Capital and David Martinez, was initially scheduled to take place on July 12, following Mr. Wiener's deposition. Following the adjournment of Mr. Wiener's deposition under the circumstances described above, Defendants advised Plaintiff's counsel that because Plaintiff's expert should be deposed first, Mr. Heller's deposition should be postponed until after Mr. Wiener's deposition is resumed and completed. On July 9, Plaintiff's purported to serve a subpoena on Mr. Heller for a deposition on July 12. Defendants intend to move for protective order so that Mr. Wiener's deposition can be completed first, unless the parties can reach agreement on these issues.

Pleadings:

1. Summary Judgment Motions and Motions Not Otherwise Covered

Defendants Studio Capital and David Martinez filed an Agreed Expedited Motion to Amend the Scheduling Order [Dkt. No. 267] extending the deadline to file motions for summary judgment and all motions not otherwise covered until July 13, which was set to follow the final expert deposition then scheduled for July 12. The Court has granted this motion [Dkt. No. 268]. Defendants intend to file their motions for summary judgment and all motions not otherwise covered by July 13 in accordance with this deadline.

2. Motion For Leave To File A Third Amended Complaint

Plaintiff filed a Sealed Motion for Leave to File A Third Amended Complaint on June 6 [Dkt. No. 252]. Defendants filed their opposition on June 28 [Dkt. Nos. 269 and 270].

Plaintiff's reply will be due on July 12.

Settlement:

The parties have been discussing proposals for mediation and will report on whether they have agreed on a proposal.

Dated: July 10, 2012

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Between June 27, 2012 and today, David Herrington has attempted to secure a joint status report with opposing counsel on numerous occasions, but on July 10, Plaintiff, without prior notice to us, unilaterally filed a report of her own.

Kurt Schwarz
Kurt Schwarz

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing is being served on counsel of record for all parties via the Court's ECF system.

Kurt Schwarz
Kurt Schwarz